

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION

U.S. DISTRICT COURT  
BRUNSWICK DIVISION

2006 FEB -3 P 4:47

CLERK *[Signature]*

HARRY MICHAEL HIBBETTS,

Petitioner,

vs.

JOSE M. VAZQUEZ,

Respondent.

CIVIL ACTION NO.: CV205-163

**ORDER**

After an independent review of the record, the Court concurs with the Report and Recommendation of the Magistrate Judge, to which Petitioner Harry Michael Hibbetts ("Hibbetts") filed Objections. In his Objections, Hibbetts asserts that the Government inappropriately responded to the undersigned's Show Cause Order by filing a Motion to Dismiss. Hibbetts asserts that the Magistrate Judge incorrectly relied on case law to "commit errors of constitutional dimension." (Obj. at 3.) Hibbetts contends that his petition satisfies 28 U.S.C. § 2255's savings clause because Booker, Blakely, and Apprendi are retroactively applicable to cases on collateral review.

The Government correctly responded to Hibbetts' petition by filing a Motion to Dismiss. Further, the Eleventh Circuit has determined that arguments asserted under Booker are not retroactively applicable. See Varela v. United States, 400 F.3d 864, 867-68 (11th Cir. 2005). The Magistrate Judge accurately concluded that Hibbetts' petition does not satisfy the savings clause of § 2255 and may not be addressed pursuant to 28 U.S.C. § 2241.

Hibbetts' Objections are without merit. The Magistrate Judge's Report and Recommendation is adopted as the opinion of the Court. Hibbetts' petition for writ of habeas corpus, filed pursuant to 28 U.S.C.A. § 2241, is **DISMISSED**. The Clerk is hereby authorized and directed to enter the appropriate Judgment.

SO ORDERED, this 3<sup>rd</sup> day of Feb., 2006.



JUDGE, UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA